

CHAD A. READLER
Acting Assistant Attorney General

STEVEN W. MYHRE
Acting United States Attorney
District of Nevada

TROY K. FLAKE
Assistant United States Attorney
501 Las Vegas Boulevard, South, Suite 1100
Las Vegas, Nevada 89101
Telephone: 702-388-6336
E-mail: *troy.flake@usdoj.gov*

RUTH A. HARVEY
MICHAEL J. QUINN
JOHN R. KRESSE
DAVID H. DECELLES
CATHY J. BURDETTE
I-HENG HSU
U.S. Department of Justice, Civil Division
P.O. Box 875
Ben Franklin Station
Washington, D.C. 20044-0875
Telephone: (202) 616-2238
E-mail: *john.kresse@usdoj.gov*

Attorneys for the United States

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

UNITED STATES OF AMERICA,)	Case No: 2:17-cv-02303-MMD-PAL
)	
Plaintiff,)	
)	
v.)	JOINT MOTION FOR ENTRY OF
)	ORDER PROTECTING
COUNTY OF CLARK and)	CONFIDENTIAL INFORMATION
NEVADA LINKS, INC.,)	
)	
Defendants.)	

The parties are engaged in discovery in this matter and have determined that discovery may result in the disclosure of privileged, confidential, proprietary, business, financial, or otherwise sensitive information. By this joint motion, the parties respectfully request that the

1 Court enter the following order to facilitate discovery and protect the parties' confidential
2 information.

3 s/ John R. Kresse

4 John R. Kresse

UNITED STATES DEPARTMENT OF JUSTICE

5 1100 L Street NW, Room 10100

Washington, DC 20005

6 (202) 616-2238

Attorney for Plaintiff United States

7 s/ Jonathan G. Hardin

8 Jonathan G. Hardin, *pro hac vice*

PERKINS COIE LLP

9 700 13th Street N.W., Suite 600

Washington, DC 20005

10 (202) 654-6297

Attorney for Defendant County of Clark

s/ David J. Lazerwitz

David J. Lazerwitz, *pro hac vice*

FARELLA BRAUN & MARTEL LLP

Russ Bldg., 235 Montgomery St., 17th Floor

San Francisco, CA 94104

11 (415) 954-4980

Attorney for Defendant Nevada Links, Inc.

1 Whereas, plaintiff United States of America (“United States”) and defendants County of
2 Clark (“County”) and Nevada Links, Inc. (“Nevada Links”) (collectively, “the Parties” and
3 each, a “Party”) have determined that discovery may result in the disclosure of privileged,
4 confidential, proprietary, business, financial, or otherwise sensitive information.

5 Whereas, to protect the legitimate concerns of the Parties, as well as any third parties
6 required to respond to discovery in this matter, which may arise out of any such information
7 that may be made available during discovery, the Parties jointly requested that the Court enter
8 the following order (the “Confidentiality Order”) in accord with Rule 26(b)(5) and 26(c) of the
9 Federal Rules of Civil Procedure.

10 Accordingly, IT IS ORDERED that the Parties’ Joint Motion for Entry of Order
11 Protecting Confidential Information is granted, and that the following procedures control
12 discovery in this litigation regarding privileged, confidential, proprietary, business, financial, or
13 otherwise sensitive information:

14 1. The Parties have agreed, with reliance on Federal Rule of Civil Procedure 26 and
15 Federal Rule of Evidence 502, to entry of this Confidentiality Order to preserve the
16 confidentiality of certain information that may be disclosed in discovery in this case and to
17 protect against the inadvertent disclosure of documents or information subject to a claim of
18 privilege by any Party.

19 2. This Confidentiality Order governs all documents and information produced by each
20 Party in this case: the County, Nevada Links, and the United States.

21 The Parties recognize that documents and information provided in discovery in this case
22 may contain sensitive financial or commercial information, trade secrets, and/or other private
23 information protected against disclosure, either by contract or by law, including but not limited
24 to the Privacy Act, 5 U.S.C. § 552a, and the Trade Secrets Act, 18 U.S.C. § 1905.

25 3. Definitions:

26 A. “Confidential Information” means any documents; information contained within any
27 documents; and any other information, written or oral, provided in discovery and designated
28 as “confidential” by the Designating Party. Confidential Information does not include any

1 information, document, or thing (or information derived therefrom) that: (1) at the time of
2 or after disclosure is available to or known to the public or that is required by law to be
3 disclosed; or (2) when a Party releases a claim of confidentiality or otherwise gives
4 permission to use Confidential Information in any public or unrestricted manner. A Party
5 waives its claim to confidentiality of any information that the Party files with the Court as
6 unsealed matter.

7 B. "Designating Party" means the Party (or a non-Party participating in this action) that
8 designates material as "confidential" in accord with this Order.

9 C. "Privileged Matter" means documents or information protected from disclosure by
10 the attorney-client privilege, work product doctrine, deliberative process privilege, or any
11 other immunity from discovery.

12 D. "Producing Party" means the Party (or non-Party participating in this action) that
13 produces or otherwise discloses Confidential Information or Privileged Matter.

14 E. "Receiving Party" means the Parties to this action (or non-parties participating in this
15 action) receiving Confidential Information or Privileged Matter.

16 4. To claim Confidential Information, the Designating Party or its counsel must clearly
17 mark each page of a document "CONFIDENTIAL" when produced in paper form and, for any
18 documents produced in PDF or any other electronic file format, must digitally tag or flag pages
19 as "CONFIDENTIAL" in a manner agreeable to the Parties.

20 5. An inadvertent failure by a Producing Party to designate any material as Confidential
21 Information does not waive any claim of confidentiality. If a Party inadvertently fails to
22 designate any material as Confidential Information, that material will still be treated as
23 Confidential Information if the Producing Party notifies the other Parties in writing, as soon as
24 practicable, designating the material as Confidential Information. Upon receipt of such written
25 notice, the Receiving Parties must treat the designated material as Confidential Information and
26 must stamp or mark it accordingly, or, if provided correctly designated copies of the material,
27 destroy the undesignated material or return it to the Producing Party. The Parties will not be
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1 responsible for any disclosure of the undesignated material before receipt of such written notice,
2 provided such use or disclosure of the material was proper at the time.

3 6. Any deposition testimony in this case will be treated as “Confidential Information” 21
4 calendar days after delivery of the deposition transcript to the Designating Party. The testimony
5 will be deemed to contain no Confidential Information unless the Designating Party identifies
6 by page and line any Confidential Information claimed in the transcript before the expiration of
7 the 21 calendar days.

8 7. “Confidential Information” disclosed to a Receiving Party or its counsel in the case:
9 (a) may be used by a Receiving Party and counsel only for the purposes of this case; (b) may
10 not be published to the public in any form by any Receiving Party or counsel, or used by a
11 Receiving Party for any business or commercial purpose; and (c) may be disclosed only to the
12 following persons:

13 (i) Counsel of record for a Party (including any other attorneys employed by a Party).

14 (ii) Secretarial, clerical, or paralegal personnel employed full-time or part-time by
15 counsel of record for a Party who are assigned work for this case.

16 (iii) Independent (non-employee) expert witnesses or advisors retained by any Party in
17 connection with the case.

18 (iv) Officers and managerial or supervisory personnel of the Parties.

19 (v) Court reporters or stenographers engaged to record deposition or hearing testimony,
20 and their employees.

21 (vi) Any person disclosed in the Parties’ initial disclosures or supplemental disclosures
22 as a potential witness or person with relevant information under Fed. R. Civ. P. 26(a)(1), so
23 long as the Party disclosing the Confidential Information has a good faith belief that the
24 witness may be called to testify in the case about the subject matter of the Confidential
25 Information and the person does not retain the Confidential Information.

26 (viii) Any person called to testify under oath by the Parties in this litigation, during their
27 testimony, provided the person does not retain the Confidential Information.
28

1 (ix) Any other person (a) authorized in writing by counsel for the Designating Party to
2 receive Confidential Information, or (b) approved by the Court upon motion of any Party.

3 8. A copy of this Confidentiality Order must be delivered to each Party and to each person
4 within categories (ii) through (ix) of paragraph 7(c) above to whom a disclosure of Confidential
5 Information is made, upon or before disclosure, by the Party making the disclosure or by its
6 counsel. All persons in categories (i) through (ix) above must acknowledge receipt of the order
7 in writing and their understanding that any breach of the terms of the order may be punished as
8 a contempt of court. Notwithstanding execution of a written acknowledgment, the provisions of
9 this Confidentiality Order are binding upon each person to whom disclosure is made.

10 9. The provisions of this Confidentiality Order may not be construed as preventing: (a) any
11 disclosure of Confidential Information by any Party where required by law, court order, or
12 subpoena; however, the Party must comply with ¶ 17 (below) in giving the Designating Party
13 prompt notice of its intent to make such a disclosure in order to provide the Designating Party a
14 reasonable opportunity to object to such disclosure; or (b) any disclosure of Confidential
15 Information, in accordance with the provisions of this Confidentiality Order, to any judge,
16 magistrate, or employee of this Court for purposes of these proceedings; or (c) any disclosure of
17 Confidential Information to or by any governmental entity for the purpose of the enforcement of
18 the civil or criminal laws.

19 10. If a Party desires to file Confidential Information with the Court and/or a pleading,
20 motion, or other paper that discloses Confidential Information, the Party must comply with the
21 requirements of LR IA 10-5 and first obtain an order, by stipulation or motion, from the Court
22 permitting the filing under seal. All Confidential Information permitted to be filed under seal
23 will be kept under seal until further order of the Court.

24 11. Nothing in this Confidentiality Order limits the right of a Party to object to the
25 production or disclosure of any documents or information on any ground (other than on the
26 basis of Confidential Information) including, without limitation, that the documents or
27 information are Privileged Matter. The Parties further recognize the possibility of inadvertent
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1 disclosure of Privileged Matter. This order recognizes and approves the Parties' stipulated
2 agreement regarding the inadvertent disclosure of Privileged Matter:

3 A. The searches and reviews conducted for the purpose of providing discovery qualify
4 under Fed. R. Evid. 502(b)(2) as "reasonable steps to prevent disclosure" of Privileged
5 Matter, provided the documents and information produced have been searched for the
6 names of known attorneys and for the presence in such documents for the terms
7 "privileged," "privilege," "attorney-client," "work product," and – for the United States --
8 "deliberative," and the Parties agree that documents and information that contain Privileged
9 Matter or that are otherwise protected are not required to be produced;

10 B. The disclosure or production, despite the application of such searches and reviews,
11 of any Privileged Matter or otherwise protected document or information is "inadvertent"
12 within the meaning of Fed. R. Evid. 502(b)(1); and

13 C. After inadvertent disclosure or production of Privileged Matter, any Party following
14 the procedures set out below will have taken "reasonable steps to rectify the error" within
15 the meaning of Fed. R. Evid. 502(b)(3). Accordingly, to prevent injustice from inadvertent
16 disclosure or production of Privileged Matter, the parties agree and it is ordered that:

17 (1) If a Party has satisfied the requirements of paragraph 11(A) above but
18 nevertheless has disclosed or produced Privileged Matter, such privilege or protection is
19 not waived by such disclosure or production. As established by Fed. R. Evid. 502(d)
20 and (f), this finding of nonwaiver also applies in any other federal or state proceeding.

21 (2) A Producing Party who desires to claim that an already produced document or
22 information constitutes Privileged Matter must provide notice ("Notice") to counsel for
23 all Parties. The Notice must contain information sufficient to identify: (a) the document
24 or information by its specific identifying characteristics, such as by Bates number, and
25 must include any other information reasonably necessary to locate the materials
26 produced; and (b) the basis for the assertion that it contains Privileged Matter. An initial
27 Notice may be made orally on the record at a deposition or hearing, provided that it is
28 confirmed via electronic mail within seven calendar days.

(3) After Notice, all Parties must promptly take reasonable steps to retrieve the Privileged Matter from anyone to whom a copy or disclosure has been afforded and to destroy all copies in a secure manner. A Party may challenge the assertion of privilege by motion to the Court within fourteen days of receipt of the Notice, following good faith efforts to confer and resolve the matter. As provided by Fed. R. Civ. P. 26(b)(5)(B), the Producing Party must preserve the document or information until the claim of privilege or other protection is resolved.

(4) After Notice, and unless the Parties agree in writing or the court otherwise permits, no Party may disclose or refer to the Privileged Matter, whether in writing or orally, to any person, or otherwise use the document or information in this or any other case.

12. This Confidentiality Order does not: (A) operate as an admission by any Party that any particular discovery material contains or reflects trade secrets, proprietary or commercial information, privileged information, or other confidential matter; (B) prejudice in any way the right of a Party to object to the production of documents it considers not subject to discovery; or (C) prejudice in any way the right of a Party to seek a Court determination concerning (1) whether particular discovery material should be produced, or (2) if produced, whether such material should be subject to the terms of this Confidentiality Order; or (D) prejudice in any way the right of a Party to apply to the Court for a further protective order relating to any Confidential Information.

13. A Party seeking to use Confidential Information during any hearing or trial, including through argument or the presentation of evidence, may do so only after taking steps that the Court deems necessary to preserve the confidentiality of the Confidential Information.

14. A Party may challenge the designation of any material or document as Confidential Information by using the following procedure:

A. Notice; Meet and Confer. The challenging Party must (1) notify counsel for the Designating Party in writing that explains a good faith basis for its contention that the confidentiality designation was not proper and (2) give the Designating Party an opportunity

1 to review the designated material, to reconsider the designation, and, if no change in
2 designation is offered, to respond to the challenging Party in writing within five business
3 days. If the Designating Party fails to timely respond, the challenged material will no longer
4 be treated as Confidential Information. If the challenge remains unresolved, the Parties
5 involved must meet and confer to attempt to resolve the dispute. If they are still unable to
6 resolve the dispute, the challenging Party may file a motion with the Court (in compliance
7 with ¶ 14.B., below). If no motion is filed, the challenged material will continue to be
8 treated as Confidential Information.

9 B. Judicial Intervention. A Party challenging a confidentiality designation may file and
10 serve a motion under seal that identifies the challenged material and sets forth in detail the
11 basis for the challenge. The motion must be accompanied by a declaration affirming that
12 the movant has complied with ¶ 14.A., above. The Designating Party bears the burden of
13 persuasion in opposing the motion. Until the Court rules on the challenge, all Parties must
14 continue to treat the materials as Confidential Information.

15 15. All Parties, including their employees and agents, the Parties' counsel and employees
16 and agents of counsel must take reasonable steps necessary to prevent disclosure of Confidential
17 Information to unauthorized persons.

18 16. Upon conclusion of the case, a Party may request the return of all previously produced
19 material containing "Confidential Information," including copies. Within 30 days from the
20 receipt of such request, each person or Party to whom Confidential Information had been
21 produced must return it, including any copies, or destroy it and certify that it has been
22 destroyed.

23 17. If a Receiving Party is served with a subpoena or an order issued in other litigation that
24 would compel disclosure of another Party's Confidential Information, within three business days
25 after receiving the subpoena or order, the Receiving Party must notify in writing the Designating
26 Party and attach or enclose a copy of the subpoena or order. Also within three business days
27 after receiving the subpoena or order, the Receiving Party must notify in writing the party who
28

1 caused the subpoena or order to issue that some or all of the material covered by the subpoena or
2 order is subject to this Order, and attach or enclose a copy of this Order.

3 The purpose of imposing these duties is to alert the interested persons to the existence of
4 this Order and to afford the Designating Party in this case an opportunity to try to protect its
5 Confidential Information in the court from which the subpoena or order issued. The Receiving
6 Party must cooperate with the Designating Party in connection with seeking protection in that
7 court of its Confidential Information, but the Designating Party bears the burden and the
8 expense of seeking such protection. Nothing in these provisions should be construed as
9 authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from
10 another court. The obligations set forth in this paragraph remain in effect while the Receiving
11 Party has in its possession, custody or control Confidential Information of the Designating
12 Party. Before complying with the subpoena or order, the Receiving Party must wait a
13 reasonable amount of time before disclosing such Confidential Information (not less than 15
14 days after notifying the Designating Party, unless the subpoena or order mandates compliance
15 within a shorter time period), to permit the Designating Party to object to such compliance.

16 18. Unless otherwise provided above, no restrictions imposed by this Confidentiality Order
17 may be waived, modified, dissolved, or terminated, except by written agreement executed by
18 counsel of record for the Parties or by further order of the Court.

19 19. This Confidentiality Order has been entered to facilitate discovery and the production
20 of relevant evidence in this action. Neither the entry of this Confidentiality Order, nor the
21 designation of any information, document, or the like as Confidential Information, nor the
22 failure to make such designation, will constitute evidence with respect to any issue in this
23 action.

24 IT IS SO ORDERED.

25
26 UNITED STATES MAGISTRATE JUDGE

27 DATED: _____

CERTIFICATE OF SERVICE

In compliance with the Court's Local Rule 5-1, the undersigned certifies that on February 16, 2018, a copy of the foregoing document, "Joint Motion for Entry of Order Protecting Confidential Information," was served (via the Court's CM/ECF system) upon counsel of record for defendants.

s/ John R. Kresse
John R. Kresse
Attorney for the United States